

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
HECTOR SANTANA,

Petitioner,

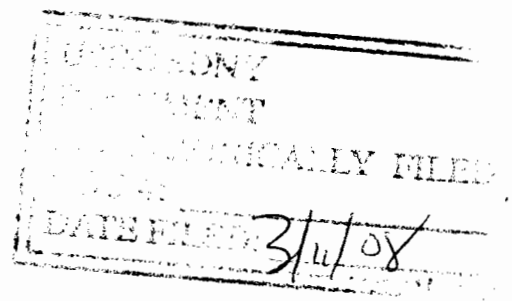
-v.-

JAMES MANCE, et al.,

Respondents.
-----X

ORDER

07 Civ. 5644 (CM) (GWG)



GABRIEL W. GORENSTEIN, United States Magistrate Judge

The Court directs the respondents to state whether they agree that the description of the conversation between petitioner and his attorney, as described in paragraphs 2-3 of the petitioner's affidavit of August 5, 2004, A33-34, is to be accepted as true for purposes of adjudicating the petition (assuming without deciding that this conversation is deemed material to the Court's adjudication of the petition).¹


If the respondent is arguing that this description should not be accepted as true, the respondents should address what facts were found by the state courts with respect to this conversation. In the event respondents argue that there were insufficient findings of fact on this point that should now be corrected, the respondents should address what action this Court may take to obtain an adjudication of the relevant facts.

The respondents may submit a letter or brief on these topics – and any other related topics – on or before March 25, 2008. The petitioner may respond on or before April 8, 2008, with any reply by April 15, 2008. The parties may change these dates by agreement and without Court order as long as the Court is informed of any change by letter.

¹ In this regard, the Court notes that the state court stated, as the only apparent alternative holding to a purported procedural bar that respondent does not raise, that "counsel's actions (if accurate), in providing misinformation about the minimum sentence to be served, does such [sic] constitute ineffective assistance of counsel." A63 (emphasis added).

SO ORDERED

DATED: New York, New York
March 10, 2008



GABRIEL W. GORENSTEIN
United States Magistrate Judge

Copies to :

Lorraine Maddalo
The Legal Aid Society
Criminal Appeals Bureau
199 Water Street
New York, NY 10038

Lisa Fleishmann
Assistant Attorney General
120 Broadway
New York, NY 10271